



OFFICE OF THE
DISTRICT ATTORNEY
ORANGE COUNTY, CALIFORNIA
TODD SPITZER

Via First Class Mail

July 15, 2019

Dan Rubins
MuckRock News
DEPT MR 76607
411A Highland Ave.
Somerville, MA 02144-2516

Mr. Rubins:

In compliance with Government Code section 6253, this letter constitutes our formal response to your California Public Records Act (Gov't. Code § 6250 et seq) dated July 4, 2019 that our office received on July 15, 2019 in which you are requesting:

"All 'Brady lists,' 'Giglio lists,' 'potential impeachment disclosure lists,' or any similar compiled records or lists of records of the type set forth in California Penal Code §832.7 (b)(1)(C). That is, 'Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency of dishonesty by a peace officer or custodial officer directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer, including, but not limited to, any sustained finding of perjury, false statements, filing false reports, destruction, falsifying, or concealing of evidence.'"

In order to comply with our obligations under the Public Records Act, we are treating your request as a request for records setting forth information on law enforcement officers in our jurisdiction whose involvement in a criminal proceeding must be disclosed as potentially exculpatory evidence in accordance with *Brady v. Maryland*, 373 U.S. 83 (1963) and *Giglio v. United States*, 450 U.S. 150 (1972) and that are records as set forth in Penal Code section 832.7.

Your request calls for a compilation of information not existing within the Orange County District Attorney's Office. The Public Records Act applies to existing records and does not require a public agency to create a record that does not exist. (Gov. Code § 6252 (e) and (f); *Sander v. State Bar of California* (2013) 58 Cal.4th 300.)

Our office does not have a record of a "Brady List." Records responsive to this request are maintained as individual investigative files.

REPLY TO: ORANGE COUNTY DISTRICT ATTORNEY'S OFFICE

WEB PAGE: <http://orangecountyda.org/>

MAIN OFFICE
401 CIVIC CENTER DR W
P.O. BOX 808
SANTA ANA, CA 92701
(714) 834-3600

NORTH OFFICE
1275 N. BERKELEY AVE.
FULLERTON, CA 92832
(714) 773-4480

WEST OFFICE
8141 13TH STREET
WESTMINSTER, CA 92883
(714) 896-7281

HARBOR OFFICE
4801 JAMBOREE RD.
NEWPORT BEACH, CA 92660
(949) 476-4650

JUVENILE OFFICE
341 CITY DRIVE SOUTH
ORANGE, CA 92868
(714) 835-7824

CENTRAL OFFICE
401 CIVIC CENTER DR. W
P.O. BOX 808
SANTA ANA, CA 92701
(714) 834-3952

Penal Code section 832.7 mandates the following records be made available for public inspection: peace officer or custodial officer records maintained by a state or local agency of the following:

1. An Incident involving the discharge of a firearm at a person by a peace officer or custodial officer.
2. An incident in which the use of force resulted in death or great bodily injury.
3. An incident in which a *sustained* was made by a law enforcement agency or oversight agency that a peace officer or custodial officer engaged in sexual assault involving a member of the public.
4. An incident in which a *sustained* finding was made by a law enforcement agency or oversight agency of dishonesty by a peace officer or custodial officer directly relating to the reporting, investigation or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by another peace officer or custodial officer, including but not limited to, any sustained finding of perjury, false statements, destruction, falsifying or concealing evidence.

As defined in Penal Code section 832.8, “sustained” means a final determination by an investigating agency, commission, board, hearing officer, or arbitrator following an investigation and opportunity for an administrative appeal that the actions of the peace officer or custodial officer were found to violate law or department policy. Records not containing a record of a final determination as defined in Penal Code section 832.8 will not be disclosed.

We have responsive records to your request that are disclosed with this response.

Responsive records not disclosed or redacted portions of responsive, disclosed records are exempt from disclosure pursuant to the following exemptions:

1. Government Code section 6254, subdivision (c), Personnel, and/or similar records, the disclosure of which would constitute an unwarranted invasion of privacy.
2. Government Code section 6254, subdivision (k); Records the disclosure of which is exempted or prohibited pursuant to federal or state law, specifically:
 - a. Attorney Work Product, Code of Civil Procedure section 2018.030.
 - b. State summary criminal history information, Penal Code sections 11140 et seq.
 - c. Local summary criminal history information, Penal Code sections 13100 et seq.
 - d. Criminal offender record information, Penal Code sections 11075 et seq.

These records or portions of records contain personal data and/or information of civilian witnesses or would reveal the identity of a peace officer who was involved in an incident where there was no sustained finding of misconduct as to that officer.

We are not disclosing the following recordings from the records of *People v. Miguel Siliceo*, Orange County Superior Court Case No. 17CF0642:

Body Work Camera Recordings

Corporal Becerra	5:15 minutes
Corporal Bova	3 minutes
Officer Lemoine	4:45 minutes
Officer Reynoso	30:29 minutes

* The audio from these recordings is contained on transcripts disclosed with this response.

OCDA Audio Recordings of Interviews

Corporal Becerra	16:50 minutes
Corporal Bova	23:54 minutes
Jailer Walker	21:26 minutes
Lisa Neal	17:45 minutes
Officer Lemoine	27:28 minutes
Officer Reynoso	5:35 minutes
Sergeant James	6:14 minutes
Victor Serrano	45:53 minutes

In order for this office to legally disclose these recordings, they would need to be altered, i.e. data extracted from them in order to protect the privacy of the persons identified on the recordings. This would require an employee to listen to each recording in its entirety and note the time and portions of the recording(s) that contain exempt data. Our Tech Services Unit would then perform the requested redactions.

Our cost to do this is \$ 27 per hour. (This is the rate our office charges for production of audio and video discovery.) You are obligated to pay this cost if you wish us to produce these records. This is pursuant to Government Code section 6253.9(b)(2) which states that the requester shall bear the cost of producing a copy of the record, including the cost of computer services necessary to produce a copy of the record when the request would require data extraction and/or compilation.

Please advise in writing whether you wish some or all of the above listed recordings to be redacted and that you agree to pay the cost of production for those recordings.

Please find enclosed one CD containing pages 0001-0559 of records.

In conclusion, the OCDA claims for its records, such as might exist, all applicable exemptions from the California Public Records Act disclosure. In maintaining the lawful confidentiality of these records, the OCDA, claims, enforces, and applies any and all applicable exemptions, privileges, and proscriptions against public disclosure of records, including but not limited to, those listed in Article 2 of Government Code, Title 1, Division 7, Chapter 3.5, the California Evidence and Penal Codes, and the Federal Rules of Evidence.

While we have set forth our reasons for our denial, we reserve the right to present additional theories and authority for non-disclosure in the future.

If you wish to bring any additional information to our attention concerning the positions taken in this letter, please reply as soon as possible.

Sincerely,



Denise Hernandez
Deputy District Attorney
Special Prosecutions Unit